
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

ICON Health & Fitness, Inc., Plaintiff, v. Wilbert Quincy Murdock, et al., Defendants.	ORDER DEEMING MOOT MOTION FOR ENTRY OF DEFAULT AND MOTION TO SET ASIDE DEFAULT Case No. 1:21-cv-00006-JNP-DBP District Judge Jill N. Parrish Chief Magistrate Judge Dustin B. Pead
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This matter is before the court on two motions.¹ Plaintiff moves the court for entry of default as to Wilbert Quincy Murdock. (ECF No. 16.) And Defendant, Wilbert Quincy Murdock, moves to set aside default. (ECF No. 26.). Upon review of the docket, the court finds both motions moot.

First, there is no record that a default certificate has been entered by the court. Thus, a motion to set aside default is at best premature and the court deems Defendant's motion moot.

Next, Defendants have moved to dismiss the complaint arguing a lack of personal jurisdiction and lack of subject matter jurisdiction. (ECF No. 27.) The Clerk of Court shall only enter default when an opposing party "has failed to plead or otherwise defend" against a suit. Fed. R. Civ. P. 55(a). Moving to dismiss the complaint is an action to defend against the suit making the motion moot.

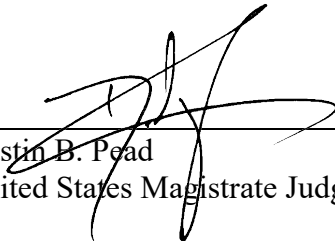
Finally, default is a disfavored remedy. A "strong policy exists that favor[s] resolution of disputes on their merits [and a] default judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party."

¹ The case is referred to the undersigned pursuant to 28 U.S.C. 636(b)(1)(A) from District Judge Jill Parrish. (ECF No. 7.).

Magnusson v. Ocwen Loan Servicing, LLC, No. 2:14-CV-161-DN-DBP, 2014 WL 4185672, at *2 (D. Utah Aug. 21, 2014) (internal quotations and citations omitted). Based upon the docket it appears this case should move forward past any allegations of default.

Accordingly, the court finds both motions MOOT.

DATED this 28 June 2021.



Dustin B. Pead
United States Magistrate Judge